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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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10
11 SECURITIES AND EXCHANGE
12 COMMISSION,

13 Plaintiff,

14 vs.

15 JERRY L. BURDICK,

16 Defendant.

17 Case No. _____
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08 CV 1390 JAH JMA

CONSENT OF DEFENDANT
JERRY L. BURDICK

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1 **CONSENT OF DEFENDANT JERRY L. BURDICK**

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3 1. Defendant Jerry L. Burdick ("Defendant") acknowledges having been
4 served with the complaint in this action, enters a general appearance, and admits
5 the Court's jurisdiction over Defendant and over the subject matter of this action.

6 2. Without admitting or denying the allegations of the complaint (except
7 as to personal and subject matter jurisdiction, which Defendant admits), Defendant
8 hereby consents to the entry of the Final Judgment in the form attached hereto (the
9 "Final Judgment") and incorporated by reference herein, which, among other
10 things:

- 11 (a) permanently restrains and enjoins Defendant from violations of
12 Section 17(a)(2) and (3) of the Securities Act of 1933 [15
13 U.S.C. § 77q(a)(2) and (3)] and Rules 13a-14, 13b2-1, and
14 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.13a-14,
15 240.13b2-1, and 240.13b2-2], and aiding and abetting violations
16 of Sections 13(a) and 13(b)(2)(A) of the Securities Exchange
17 Act of 1934 [15 U.S.C. §§ 78m(a) and 78m(b)(2)(A)], and
18 Rules 12b-20 and 13a-13 promulgated thereunder [17 C.F.R.
19 §§ 240.12b-20 and 240.13a-13]; and
20 (b) orders Defendant to pay a civil penalty in the amount of
21 \$25,000.00 under Section 20(d) of the Securities Act [15 U.S.C.
22 § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §
23 78u(d)(3)].

24 3. Defendant agrees that he shall not seek or accept, directly or
25 indirectly, reimbursement or indemnification from any source, including but not
26 limited to payment made pursuant to any insurance policy, with regard to any civil
27 penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of
28 whether such penalty amounts or any part thereof are added to a distribution fund

1 or otherwise used for the benefit of investors. Defendant further agrees that he
2 shall not claim, assert, or apply for a tax deduction or tax credit with regard to any
3 federal, state, or local tax for any penalty amounts that Defendant pays pursuant to
4 the Final Judgment, regardless of whether such penalty amounts or any part thereof
5 are added to a distribution fund or otherwise used for the benefit of investors.

6 4. Defendant waives the entry of findings of fact and conclusions of law
7 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

8 5. Defendant waives the right, if any, to a jury trial and to appeal from
9 the entry of the Final Judgment.

10 6. Defendant enters into this Consent voluntarily and represents that no
11 threats, offers, promises, or inducements of any kind have been made by the
12 Commission or any member, officer, employee, agent, or representative of the
13 Commission to induce Defendant to enter into this Consent.

14 7. Defendant agrees that this Consent shall be incorporated into the Final
15 Judgment with the same force and effect as if fully set forth therein.

16 8. Defendant will not oppose the enforcement of the Final Judgment on
17 the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal
18 Rules of Civil Procedure, and hereby waives any objection based thereon.

19 9. Defendant waives service of the Final Judgment and agrees that entry
20 of the Final Judgment by the Court and filing with the Clerk of the Court will
21 constitute notice to Defendant of its terms and conditions. Defendant further
22 agrees to provide counsel for the Commission, within thirty days after the Final
23 Judgment is filed with the Clerk of the Court, with an affidavit or declaration
24 stating that Defendant has received and read a copy of the Final Judgment.

25 10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the
26 claims asserted against Defendant in this civil proceeding. Defendant
27 acknowledges that no promise or representation has been made by the Commission
28 or any member, officer, employee, agent, or representative of the Commission with

1 regard to any criminal liability that may have arisen or may arise from the facts
2 underlying this action or immunity from any such criminal liability. Defendant
3 waives any claim of Double Jeopardy based upon the settlement of this proceeding,
4 including the imposition of any remedy or civil penalty herein. Defendant further
5 acknowledges that the Court's entry of a permanent injunction may have collateral
6 consequences under federal or state law and the rules and regulations of self-
7 regulatory organizations, licensing boards, and other regulatory organizations.
8 Such collateral consequences include, but are not limited to, a statutory
9 disqualification with respect to membership or participation in, or association with
10 a member of, a self-regulatory organization. This statutory disqualification has
11 consequences that are separate from any sanction imposed in an administrative
12 proceeding. In addition, in any disciplinary proceeding before the Commission
13 based on the entry of the injunction in this action, Defendant understands that he
14 shall not be permitted to contest the factual allegations of the complaint in this
15 action.

16 11. Defendant understands and agrees to comply with the Commission's
17 policy "not to permit a defendant or respondent to consent to a judgment or order
18 that imposes a sanction while denying the allegations in the complaint or order for
19 proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant
20 agrees: (i) not to take any action or to make or permit to be made any public
21 statement denying, directly or indirectly, any allegation in the complaint or
22 creating the impression that the complaint is without factual basis; and (ii) that
23 upon the filing of this Consent, Defendant hereby withdraws any papers filed in
24 this action to the extent that they deny any allegation in the complaint. If
25 Defendant breaches this agreement, the Commission may petition the Court to
26 vacate the Final Judgment and restore this action to its active docket. Nothing in
27 this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take
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1 legal or factual positions in litigation or other legal proceedings in which the
2 Commission is not a party.

3 12. Defendant hereby waives any rights under the Equal Access to Justice
4 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any
5 other provision of law to seek from the United States, or any agency, or any
6 official of the United States acting in his or her official capacity, directly or
7 indirectly, reimbursement of attorney's fees or other fees, expenses, or costs
8 expended by Defendant to defend against this action. For these purposes,
9 Defendant agrees that Defendant is not the prevailing party in this action since the
10 parties have reached a good faith settlement.

11 13. In connection with this action and any related judicial or
12 administrative proceeding or investigation commenced by the Commission or to
13 which the Commission is a party, Defendant (i) agrees to appear and be
14 interviewed by Commission staff at such times and places as the staff requests
15 upon reasonable notice; (ii) will accept service by mail or facsimile transmission of
16 notices or subpoenas issued by the Commission for documents or testimony at
17 depositions, hearings, or trials, or in connection with any related investigation by
18 Commission staff; (iii) appoints Defendant's undersigned attorney as agent to
19 receive service of such notices and subpoenas; (iv) with respect to such notices and
20 subpoenas, waives the territorial limits on service contained in Rule 45 of the
21 Federal Rules of Civil Procedure and any applicable local rules, provided that the
22 party requesting the testimony reimburses Defendant's travel, lodging, and
23 subsistence expenses at the then-prevailing U.S. Government per diem rates; and
24 (v) consents to personal jurisdiction over Defendant in any United States District
25 Court for purposes of enforcing any such subpoena.

26 14. Defendant agrees that the Commission may present the Final
27 Judgment to the Court for signature and entry without further notice.
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1 15. Defendant agrees that this Court shall retain jurisdiction over this
2 matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 7/28/08

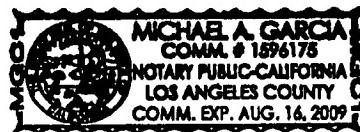
Jerry L. Burdick

On JULY 28th, 2008, Jenny L. BURDICK, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

**Notary Public
Commission expires:**

8-16-2009

Approved as to form:



David J. Schindler, Esq.
Latham & Watkins, LLP
Attorneys for Defendant
JERRY L. BURDICK

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Case No.

Plaintiff,
vs.

**[PROPOSED] FINAL JUDGMENT
AS TO DEFENDANT JERRY L.
BURDICK**

JERRY L. BURDICK,

Defendant.

1 FINAL JUDGMENT AS TO DEFENDANT JERRY L. BURDICK

2 The Securities and Exchange Commission (the "Commission") having filed
3 a Complaint and Defendant Jerry L. Burdick ("Defendant") having entered a
4 general appearance; consented to the Court's jurisdiction over Defendant and the
5 subject matter of this action; consented to entry of this Final Judgment without
6 admitting or denying the allegations of the Complaint (except as to jurisdiction);
7 waived findings of fact and conclusions of law; and waived any right to appeal
8 from this Final Judgment:

9 I.

10 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant
11 and Defendant's agents, servants, employees, attorneys, and all persons in active
12 concert or participation with them who receive actual notice of this Final Judgment
13 by personal service or otherwise are permanently restrained and enjoined from
14 violating Section 17(a)(2) and (3) of the Securities Act of 1933 (the "Securities
15 Act") [15 U.S.C. § 77q(a)(2) and (3)] in the offer or sale of any security by the use
16 of any means or instruments of transportation or communication in interstate
17 commerce or by use of the mails, directly or indirectly:

- 18 (a) to obtain money or property by means of any untrue statement of a
19 material fact or any omission of a material fact necessary in order to
20 make the statements made, in light of the circumstances under which
21 they were made, not misleading; or
22 (b) to engage in any transaction, practice, or course of business which
23 operates or would operate as a fraud or deceit upon the purchaser.

24 II.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
26 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
27 in active concert or participation with them who receive actual notice of this Final
28 Judgment by personal service or otherwise are permanently restrained and enjoined

1 from aiding and abetting an issuer's filing of quarterly reports with the
2 Commission on Forms 10-Q that fail to contain material information necessary to
3 make the required statements in the Forms 10-Q, in light of the circumstances in
4 which they are made, not misleading, in violation of Section 13(a) of the Securities
5 Exchange Act of 1934 [15 U.S.C. § 78m(a)], and Rules 12b-20 and 13a-13
6 thereunder [17 C.F.R. §§ 240.12b-20 and 240.13a-13].

III.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
9 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
10 in active concert or participation with them who receive actual notice of this Final
11 Judgment by personal service or otherwise are permanently restrained and enjoined
12 from aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act
13 [15 U.S.C. § 78m(b)(2)(A)] by knowingly providing substantial assistance to an
14 issuer in failing to make and keep books, records, and accounts, which, in
15 reasonable detail, accurately and fairly reflect the transactions and disposition of
16 the assets of the issuer.

IV.

18 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
19 Defendant and Defendant's agents, servants, employees, attorneys, and all persons
20 in active concert or participation with them who receive actual notice of this Final
21 Judgment by personal service or otherwise are permanently restrained and enjoined
22 from violating Exchange Act Rule 13b2-1 thereunder [17 C.F.R. § 240.13b2-1] by,
23 directly or indirectly, falsifying or causing to be falsified, any book, record or
24 account subject to Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §
25 78m(b)(2)(A)].

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
Defendant and Defendant's agents, servants, employees, attorneys, and all persons

1 in active concert or participation with them who receive actual notice of this Final
2 Judgment by personal service or otherwise are permanently restrained and enjoined
3 from violating Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14] by
4 falsely certifying that:

- (a) any required issuer report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report; and
 - (b) the information contained in the report fairly presents in all material respects the financial condition, results of operations, and cash flows of the issuer as of, and for the periods presented in the report.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Rule 13b2-2 of the Exchange Act [17 C.F.R. § 240.13b2-2] by making or causing to be made, or causing another person to omit or state, a materially false or misleading statement, or omitting to state a material fact in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (i) an audit or examination of financial statements required to be made pursuant to the Exchange Act regulations, or (ii) the preparation or filing of reports or documents required to be filed with the Commission pursuant to Exchange Act regulations or otherwise.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that

1 Defendant is liable for a civil penalty in the amount of \$25,000.00 pursuant to
2 Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the
3 Exchange Act [15 U.S.C. § 78u(d)(3)]. Defendant shall satisfy this obligation by
4 paying \$25,000.00 within ten (10) business days after entry of this Final Judgment
5 by certified check, bank cashier's check, or United States postal money order
6 payable to the Securities and Exchange Commission. The payment shall be
7 delivered or mailed to the Office of Financial Management, Securities and
8 Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-
9 3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying
10 Jerry L. Burdick as a defendant in this action; setting forth the title and civil action
11 number of this action and the name of this Court; and specifying that payment is
12 made pursuant to this Final Judgment. Defendant shall pay post-judgment interest
13 on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall
14 remit the funds paid pursuant to this paragraph to the United States Treasury.

VIII

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
17 Consent is incorporated herein with the same force and effect as if fully set forth
18 herein, and that Defendant shall comply with all of the undertakings and
19 agreements set forth therein.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

25 || Dated:

UNITED STATES DISTRICT JUDGE